

**Torres v Empire State Realty Trust, Inc.**

2023 NY Slip Op 33906(U)

October 27, 2023

Supreme Court, New York County

Docket Number: Index No. 153844/2020

Judge: Leslie A. Stroth

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. LESLIE A. STROTH PART 12**

*Justice*

-----X  
ALBERTO TORRES,

Plaintiff,

- v -

EMPIRE STATE REALTY TRUST, INC. and ESRT EMPIRE  
STATE BUILDING, L.L.C.,

Defendants.

-----X

EMPIRE STATE REALTY TRUST, INC. and ESRT EMPIRE  
STATE BUILDING, L.L.C.,

Third-Party Plaintiffs,

-against-

FIRST QUALITY MAINTENANCE II LLC D/B/A FIRST  
QUALITY MAINTENANCE A/K/A ALLIANCE MAINTENANCE,

Third-Party Defendant.

-----X

ESRT EMPIRE STATE BUILDING, L.L.C.,

Second Third-Party Plaintiff,

-against-

UNIVERSAL BALING CO INC., UNIVERSAL  
ENVIRONMENTAL CONSULTING SERVICES INC., and  
UNIVERSAL ENVIRONMENTAL CONSULTING, INC.,

Second Third-Party Defendants.

-----X

UNIVERSAL BALING CO INC., UNIVERSAL  
ENVIRONMENTAL CONSULTING SERVICES INC., and  
UNIVERSAL ENVIRONMENTAL CONSULTING, INC.

Third Third-Party Plaintiffs,

-against-

INDEX NO. 153844/2020  
MOTION DATE N/A  
MOTION SEQ. NO. 001

**DECISION + ORDER ON  
MOTION**

Third-Party  
Index No. 595904/2020

Second Third-Party  
Index No. 595500/2022

Third Third-Party  
Index No. 595332/2023

ACTION CARTING, ACTION ENVIRONMENTAL SERVICES,  
ACTION ENVIRONMENTAL GROUP, INC., and INTERSTATE  
WASTE SERVICES, INC.,

Third Third-Party Defendants.

-----X  
The following e-filed documents, listed by NYSCEF document number (Motion 001) 36, 37, 38, 39, 40,  
41, 42, 43, 44, 45, 46, 50

were read on this motion to/for

AMEND CAPTION/PLEADINGS

This personal injury action arises out of an accident that occurred on February 24, 2020 at or near the loading dock area of the building located at 350 Fifth Avenue, New York, New York (the premises). By this motion, plaintiff Alberto Torres moves, pursuant to CPLR 305 (a) and 3025, for leave to serve a supplemental summons and amended complaint upon second third-party defendants Universal Baling Co Inc., Universal Environmental Consulting Services Inc. and Universal Environmental Consulting, Inc. (collectively, Universal) to add them as direct defendants in the main action. Plaintiff also seeks an order deeming the amended summons and complaint served *nunc pro tunc* on all other defendants who have appeared in the action. The motion is not opposed.

Is well settled that “leave to amend a pleading should be freely granted in the absence of prejudice to the non-moving party where the amendment is not patently lacking in merit” (*Davis v South Nassau Communities Hosp.*, 26 NY3d 563, 580 [2015] [citation omitted]). “[A] party opposing leave to amend ‘must overcome a heavy presumption of validity in favor of [permitting amendment]’” (*McGhee v Odell*, 96 AD3d 449, 450 [1st Dept 2012] [citation omitted]), by demonstrating prejudice or surprise or that the proposed amendment is palpably insufficient or patently devoid of merit (*MBIA Ins. Corp. v Greystone & Co., Inc.*, 74 AD3d 499, 499 [1st Dept 2010]).

Plaintiff has demonstrated the merit of the amendment. It is alleged in the second third-party complaint that defendant/third-party plaintiff ESRT Empire State Building, L.L.C. had retained Universal to provide services at the premises where the subject accident occurred (NYSCEF Doc No. 44, Linder affirmation, exhibit 7 at 6). The court observes that Universal has served an answer to the second-third party (NYSCEF Doc No. 52) and has commenced a third third-party action against third third-party defendants, Action Carting, Action Environmental Services, Action Environmental Group, Inc., and Interstate Waste Services, Inc.; Universal had retained them to perform waste removal and waste carting services at the premises (NYSCEF Doc No. 54, third third-party complaint ¶ 17).

Accordingly, it is

ORDERED that the motion brought by plaintiff Alberto Torres for leave to serve a supplemental summons and amended complaint (motion sequence no. 001) is granted, without opposition; and it is further

ORDERED that a supplemental summons and amended complaint, in the form annexed to the motion papers as exhibit 1 (NYSCEF Doc No. 38), shall be served, in accordance with the Civil Practice Law and Rules, upon the additional parties, Universal Baling Co Inc., Universal Environmental Consulting Services Inc. and Universal Environmental Consulting, Inc., in this action within 30 days after service of a copy of this order with notice of entry; and it is further

ORDERED that the main action shall bear the following caption:

[caption on following page]

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK:

-----X  
ALBERT TORRES,

Index No. 153844/2020

Plaintiff,

- against -

ESRT EMPIRE STATE BUILDING, L.L.C., UNIVERSAL  
BALING CO INC., UNIVERSAL ENVIRONMENTAL  
CONSULTING SERVICES INC. and UNIVERSAL  
ENVIRONMENTAL CONSULTING, INC.,

Defendants.  
-----X

and third-party actions.

; and it is further

ORDERED that the amended complaint, in the form annexed to the motion papers as exhibit 1 (NYSCEF Doc No. 38), shall be deemed served *nunc pro tunc* upon service of a copy of this order with notice of entry upon the other parties who have appeared in this action; and it further

ORDERED that counsel for the moving party shall serve a copy of this order with notice of entry upon the County Clerk and the Clerk of the General Clerk's Office, who are directed to mark the court's records to reflect the parties being added pursuant hereto; and it is further

ORDERED that such service upon the County Clerk and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website).

10/27/2023  
DATE

  
LESLIE A. STROTH, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE

153844/2020 TORRES, ALBERTO vs. EMPIRE STATE REALTY TRUST,  
Motion No. 001

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